IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 4169 of 1999

For Approval and Signature:

Hon'ble MR.JUSTICE J.M.PANCHAL
and
MR.JUSTICE R.P.DHOLAKIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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GSRTC

Versus

GITABEN RAMESHBHAI KOLI

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Appearance:
MR HEMANT S SHAH for Petitioner

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CORAM : MR.JUSTICE J.M.PANCHAL and
MR.JUSTICE R.P.DHOLAKIA

Date of decision: 23/07/1999

ORAL JUDGEMENT : (Per J.M. Panchal, J.)

By means of filing this First Appeal under sec.173 of the Motor Vehicles Act, 1988 ("the Act" for brevity), Gujarat State Road Transport Corporation ("the ST" for brevity) has challenged legality of the judgment and award rendered by the Motor Accidents Claim Tribunal (Auxiliary), at Bhavnagar in Motor Accident Claim Petition No.102 of 1994.

2. The deceased Rameshbhai Ghughabhai Koli was travelling in a jeep bearing registration no.GJM 7876 on September 29, 1993 for going to Botad. At that time, respondent no.5 was driving the ST Bus bearing registration no.GJ 1 Z 2229 and coming from opposite direction, in a rash manner as a result of which the bus dashed with the jeep. Because of the accident those who were travelling in the jeep sustained serious injuries, whereas Rameshbhai, who sustained serious injuries, succumbed to the same. According to the respondents nos.1 to 4 the deceased lost his life because of the rash and negligent driving of the bus by its driver. Therefore, they instituted Motor Accident Claim Petition No.102 of 1994 before the Motor Accident Claims Tribunal at Bhavnagar ("the Tribunal" for brevity) against the present appellant as well as against the owners of the jeep, who were respondents nos.6 and 7 in the present appeal and claimed compensation of Rs.4 lakhs.

3. On summons being served the present appellant and the driver of the ST Bus contested the claim petition by filing reply at exh.11. In the said reply it was, inter alia, contended that the driver of the Bus was driving the same on the correct side of the road, but the jeep was being driven on a wrong side at an excessive speed and therefore, the claim petition was liable to be dismissed against the driver of the Bus and the present appellant. The claim made by the respondents nos.1 to 4 in the claim petition that the deceased was earning Rs.4000/per month was also disputed.

4. Respondent no.6, who was the previous owner of the jeep filed a reply and contended that before filing of the application he had sold the jeep to respondent no.7 and therefore he was not liable to satisfy the claim advanced by the claimants. However, no reply was filed by respondent no.7 controverting the averments made in the petition. Upon rival assertions of the parties necessary issues for determination were raised by the Tribunal.

5. In order to substantiate the claim advanced in the claim petition, claimant Gitaben Rameshbhai Koli was examined at exh.31, whereas the driver of the bus was also examined by the present appellant in support of the claim advanced in the written statement.

6. On appreciation of the evidence led by the parties, the Tribunal held that the driver of the ST Bus was negligent to the extent of 70% whereas the driver of

the jeep who had expired was negligent to the extent of 30%. In view of the evidence led by Gitaben, the Tribunal deduced that the income of the deceased was Rs.2100/- per month and in the ultimate analysis has awarded a sum of Rs.2,73,800/- with 12 per cent interest thereon from the date of application till realisation of the impugned award as compensation to the respondents nos.1 to 4, giving rise to the present appeal. Learned counsel for the appellant submitted that having regard to the contents of the First Information Report and the Panchnama it ought to have been held that the jeep driver was solely responsible for the accident in question. It was claimed that the jeep driver had ample opportunity to avoid the accident, but as he was driving the jeep on the wrong side at an excessive speed, the accident could not be averted and therefore, the Tribunal should not have held that the bus driver was negligent to the extent of 70%. What was claimed by the learned counsel for the appellant was that no reliable evidence was produced by Gitaben to establish the income of the deceased to be of Rs.2100/per month and therefore, the impugned award deserves to be set aside. It was emphasised that the award is very excessive and therefore, the appeal should be admitted.

7. In our view, there is no substance in any of the contentions urged on behalf of the appellant and the appeal cannot be entertained. We may state that we have taken into consideration the oral as well as the documentary evidence produced by the learned counsel for the appellant for our perusal before deciding this appeal. It is relevant to notice that in the present accident several persons were injured and they had instituted Motor Accident Claim Petitions Nos.347 of 1993, 89 of 1994, 117 of 1994 and 95 of 1994. In those claim petitions it was held by the Tribunal vide judgment dated July 22, 1996 that the bus driver was negligent to the extent of 70%, whereas the driver of the jeep was negligent to the extent of 30%. The above referred to finding was arrived at on appreciation of evidence and more particularly the evidence of the injured witnesses as well as the contents of the Panchnama. It is relevant to notice that the present appellant did not challenge the award rendered in the above referred to claim petitions and therefore, the finding that the bus driver was negligent to the extent of 70%, whereas the driver of the jeep to the extent of 30% was accepted by the appellant. In the present case the Tribunal has taken into consideration the contents of the First Information Report as well as the Panchnama and thereafter held that the driver of the bus was negligent to the extent of 70%.

The Tribunal which had the advantage of observing the demeanour of the witnesses has observed that the evidence of the driver of the bus does not inspire confidence. In the Panchnama the original position of the jeep was not mentioned, but having regard to the circumstances mentioned in the said document, such as, width of the road, etc. the Tribunal has come to the conclusion that the driver of the bus was negligent to the extent of 70%. In our view no ground is made out by the learned counsel for the appellant to interfere with the same and it is difficult to hold that the accident in question took place because of the sole negligence on the part of the jeep driver. Having regard to the facts of the case, we are satisfied that a just conclusion has been arrived at by the Tribunal to the effect that the bus driver was negligent to the extent of 70%. Said finding is hereby confirmed.

8. So far as the income of the deceased is concerned Gitaben, in her evidence recorded at exh.31, deposed that her husband was doing the work of polishing diamonds. She asserted that her husband was working in the diamond factory situated at village Ogamedi and was earning Rs.4000/- per month. In support of her say she also produced income certificate of her husband at Mark 25/8. In her cross examination she denied the suggestion that her husband was not doing the work of polishing diamonds and was doing agricultural work. She admitted that she was not in a position to produce the card which might have been issued by the employer wherein the particulars of diamonds polished by the workers are normally mentioned. The Tribunal, on consideration of her evidence, came to the conclusion that no reliable evidence was led by the claimant to establish that the income of the deceased was Rs.4000/- per month, but has deduced that the income of the deceased was of Rs.2100/-. In our view no illegality is committed by the Tribunal in assessing the income of the deceased. The evidence of Gitaben would indicate that the deceased was a skilled worker employed in the diamond factory. Though the income certificate was not accepted by the Tribunal it would indicate that the income of the deceased was more than Rs.2100/-. On overall view of the matter, we are satisfied that the Tribunal was justified in assessing the monthly income of the deceased. The deceased, at the time of accident was 25 year old. Therefore, the Tribunal was justified in applying the multiplier of 16 to the facts of the present case for working out dependency loss. We may also mention that a further sum of Rs.15,000/- has been awarded to the claimants as conventional amount, but no other amount under heads,

such as, the amount for loss of consortium, funeral charges, etc. is awarded by the Tribunal. Having regard to the attendant circumstances appearing in the case, we are satisfied that a just compensation has been awarded by the Tribunal to the claimants and no ground is made out by the appellant to interfere with the same. Therefore, the Appeal cannot be entertained and is liable to be dismissed.

9. For the foregoing reasons the Appeal fails and is summarily dismissed.

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